

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COSTCO WHOLESALE CORPORATION,

Plaintiff,

v.

ARROWOOD INDEMNITY COMPANY,

Defendant.

No. 2:17-cv-01212-RSL

STIPULATED MOTION AND
~~PROPOSED~~ ORDER TO SEAL
EXHIBITS SUPPORTING COSTCO'S
REPLY IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:
December 7, 2018

I. INTRODUCTION & RELIEF REQUESTED

Pursuant to Local Civil Rule 5(g), Plaintiff Costco Wholesale Corporation ("Costco") respectfully requests leave to file under seal certain exhibits supporting its Reply in Support of Motion for Summary Judgment. These documents relate to confidential communications in the underlying litigation (*Ellis, et al. v. Costco Wholesale Corporation*, No. C04 3341 EMC (N.D. Cal.)) and contain information protected under the doctrines of attorney-client privilege and work product protection. The Parties agree and stipulate that the exhibits identified below should be sealed consistent with this Court's orders regarding the Parties' previous motions to seal. Dkts. 73, 74, & 97. The Parties therefore respectfully request that the Court grant this Stipulated Motion.

STIPULATED MOTION AND ~~PROPOSED~~ ORDER TO SEAL EXHIBITS
SUPPORTING COSTCO'S REPLY IN SUPPORT OF
MOTION FOR JUDGMENT- 1
Cause No. 2:17-cv-01212-RSL

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II. CERTIFICATION

Pursuant to LCR 5(g)(1)(A) and (3)(A), the Parties certify that they met and conferred in an attempt to reach agreement on the need to file the documents outlined in this motion under seal, to minimize the amount of material filed under seal, and to explore redaction and other alternatives to filing under seal. These discussions took place via electronic mail and telephone over the course of December 4 and December 6, 2018. Participants in the discussions were Nicholas Brown (on behalf of Costco) and Taylor Meehan (on behalf of Arrowood).

III. LEGAL AUTHORITY AND ARGUMENT

Because there is a stipulated protective order governing the exchange of confidential documents in this matter, the party who designated a document confidential must provide the Court with a “specific statement of the applicable legal standard and the reasons for keeping a document under seal.” LCR 5(g)(3)(B). Here, records attached to a motion or opposition for summary judgment may be sealed when “compelling reasons” outweigh the presumption of disclosure. *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 677-80 (9th Cir. 2009). It is Costco’s position that compelling reasons exist in this case because the limited information to be sealed is attorney-client privileged material and protected work product made by Costco to its insurers. *Heidebrink v. Moriwaki*, 104 Wn.2d 392, 400-01 (Wash. 1985). Costco therefore requests that the Court seal the following declaration exhibits, and Arrowood does not object to this request:

- Declaration of Nicholas Brown in Support of Costco’s Motion for Summary Judgment – Exhibits 69 and 73.

These documents are similar in nature to the communications between Costco and its insurers previously sealed by the Court. Dkts. 73, 97. Accordingly, these exhibits should be

sealed in their entirety as indicated above.

It is Costco's position that a less restrictive alternative to the relief sought would not be sufficient. As explained above, Costco has requested sealing documents only when the entire document is privileged or protected under the doctrines of attorney-client privilege or work product protection. Moreover, it is Costco's position that it must file the confidential material in support of its reply to adequately protect its interests in this case. Costco therefore requests permission to seal in their entirety the exhibits as identified above, and Arrowood does not object to this request.¹

The Parties reserve all rights to assert or challenge any confidentiality designation with respect to these documents at trial.

IV. CONCLUSION

The Parties respectfully request that the Court maintain under seal unredacted versions of the filings, with appropriately redacted versions of those documents being made part of the public record.

STIPULATED TO this 7th day of December, 2018.

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¹ Costco filed redacted versions of the identified documents in the public record, with unredacted versions of each being filed under seal, subject to the Court's approval of this Stipulated Motion.

ORDER

IT IS HEREBY ORDERED that this Stipulated Motion to Seal Exhibits Supporting Costco's Reply in Support of Motion for Summary Judgment is GRANTED.

DATED this 12th day of March, 2018.



Honorable Robert S. Lasnik
United States District Judge